

# EXHIBIT 5

Affidavit of Dr. Lister  
(on behalf of himself and SSC)

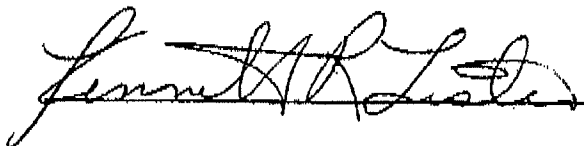


Plaintiffs, responding to subpoenas and requests for information from various government agencies, and preparing for and defending the civil suits against us directly, like developing the case against NECC and its cohorts and defending our actions).

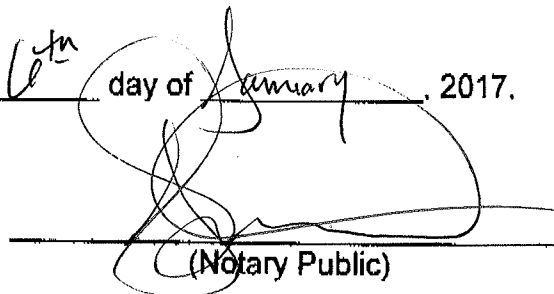
5. I know that GCE jointly represents (along with SSC and me) Jean Atkinson, RN, Saint Thomas Outpatient Neurosurgical Center, LLC ("STOPNC"), Howell Allen Clinic, a Professional Corporation, and Donald Jones, MD with respect to these activities. These are other similarly-situated Tennessee health care providers facing virtually the same legal issues we faced.
6. GCE routinely communicated with all clients collectively with respect to these activities, primarily in the form of emails exchanged with us as a group. I expected the communications from GCE, and any responses to GCE (whether from me or GCE's other clients) to be kept confidential from third parties.<sup>1</sup>
7. GCE routinely copied Ms. Atkinson and me on confidential reports about important developments in the cases against STOPNC and Dr. Jones. Likewise, GCE routinely copied STOPNC and Dr. Jones on confidential reports about important developments in the cases against SSC. These developments, and the advice provided often applied equally to all sets of Tennessee health care providers. They mostly covered issues common to all of us.
8. I felt comfortable communicating with GCE in the presence of GCE's other clients (via email) about issues related to GCE's representation. I assumed GCE's other clients involved in the litigation would have access to communications between us and GCE in order to advance our collective interests. I believed that I would be provided with communications between GCE and GCE's other clients involved in the outbreak if I requested them.

---

<sup>1</sup> The one exception to this general belief would be that I expected some of the information from GCE to be conveyed to Calisher & Associates. Given Calisher & Associates' role as SSC's management company, they were involved (or at least needed to be aware of) SSC's activities in investigating and responding to the outbreak, and preparing for potential future litigation.



Sworn to and subscribed by me on this 6<sup>th</sup> day of January, 2017.

  
(Notary Public)

My Commission Expires: 3/24/18

